

1 APPEARANCES: (CONT'D.)

2 RICK HIRD

842 Louisiana Street

3 Lawrence, Kansas 66044

4 (Appearing on behalf of NG-911,
Inc. via teleconference.)

5

NANCY HERTEL

6 225 W. Randolph St.

Chicago, Illinois 60606

7

(Appearing on behalf of AT&T

8 Illinois via teleconference.)

9 MATT JOHNSON

212 South Fourth Street

10 Springfield, Illinois 62701

11 (Appearing on behalf of Illinois
Telecommunications Association.)

12

KELLY ARMSTRONG

13 MEGAN McNEILL

MATTHEW HARVEY

14 160 N. LaSalle

Suite C-800

15 Chicago, Illinois 60601

16 (Appearing on behalf of staff of
the Illinois Commerce Commission
17 via teleconference.)

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I N D E X

WITNESSES

DIRECT

CROSS

None

EXHIBITS

None.

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PROCEEDINGS

JUDGE ALBERS: By the authority vested in me by the Illinois Commerce Commission, I now call Docket No. 12-0094. This docket concerns the Counties of Southern Illinois and their application for certificate to operate a Next Generation 911 telephone system.

May I have the appearances for the record, please?

MR. KELLY: On behalf of the Counties of Southern Illinois, John Kelly, Naperville, Illinois participating by phone.

MR. HIRD: On behalf of NG-911, Inc., this is Richard W. Hird participating from Lawrence, Kansas.

MS. McNEILL: Appearing on behalf of staff witnesses of the ICC, Megan McNeill, Kelly Armstrong, and Matthew Harvey, 160 North LaSalle, Suite C-800, Chicago, Illinois 60601.

MS. HERTEL: Appearing on behalf of AT&T Illinois Nancy Hertel, 225 West Randolph, Chicago, Illinois 60606.

MR. JOHNSON: Matt Johnson, Illinois

1 Telecommunications Association, 212 South Fourth
2 Street, Springfield, Illinois 62701.

3 (Beeping sound)

4 JUDGE ALBERS: Was there another wanting to
5 enter an appearance?

6 (Phone connection was disrupted)

7 JUDGE ALBERS: The last appearance on our end
8 was Mr. Johnson, so if anybody said anything after
9 that, please go ahead and repeat it.

10 Are there any other appearances?

11 All right. Let the record show no
12 response.

13 As far as preliminary matters, we did
14 get NG-911's response to the ruling concerning the
15 terms governing the accounting treatment that we sent
16 out. We understand the concern that NG-911 had, but
17 we think the first part of that paragraph 14 and the
18 document we sent contemplates the parties disputing a
19 confidential designation working informally together
20 to resolve that dispute before bringing it to our
21 attention.

22 So as we understand it, the parties

1 would have talked about it beforehand and understand
2 each other's position before filing anything formal
3 with Judge Von Qualen and I.

4 Does that address your concerns,
5 Mr. Hird?

6 MR. HIRD: Well, actually, I don't want to
7 spend a lot of resources on this issue. It does and
8 it doesn't because I do think it would be helpful.
9 As a result of those discussions, there may be a
10 narrowing of the issues, a narrowing of the reasons
11 for the objections.

12 It's not that I wanted to have the
13 challenging party even be necessarily tied to very,
14 very specific designations of its objections but to
15 have some idea of the basis I thought would be
16 helpful.

17 JUDGE ALBERS: Well, I think typically when we
18 have these kinds of issues come up, we let the party
19 producing the information voice their reasons as to
20 why they think it should be kept confidential.

21 MR. HIRD: Okay.

22 JUDGE ALBERS: And after that, the others can,

1 anybody who has concerns with that can then voice any
2 objection they have.

3 Does anybody have a -- I'm sorry.

4 Does anybody care to respond or issue a reply to what
5 NG-911 filed earlier.

6 MS. HERTEL: Your Honor, this is Nancy Hertel
7 from AT&T Illinois.

8 I probably would have filed something
9 along the lines that this was pretty standard
10 language, you know, from this and other proceedings
11 and that I thought that, you know, that the fact that
12 the parties were required to negotiate ahead of time
13 once someone raised an objection if they raised an
14 objection to the confidentiality, that that would
15 provide the idea of what the objection was all about.

16 So I was not going to -- I was going
17 to oppose adding the language and propose that the
18 judges, you know, use the agreement that they sent
19 out, but I don't feel a need to put that in writing
20 if it's sufficient to state it here.

21 JUDGE ALBERS: All right. We're satisfied with
22 your oral response.

1 Anyone else or would someone prefer to
2 do it in writing later?

3 MR. HIRD: Your Honor, this is Rick Hird again.

4 I guess the only part of this that
5 gave me some heartburn and that I would ask you to
6 consider is the specific provision that says that the
7 challenging party does not need to provide reasons in
8 support of the objection.

9 You know, without any requirement
10 whatsoever to provide the reasons at that stage, I
11 think it leaves the producing party guessing, and so,
12 you know, despite the fact that there might have been
13 the informal discussions and the attempt by
14 negotiation to resolve it, I guess on behalf of
15 NG-911, Inc., we would ask for what I think is a
16 pretty minor revision just to require some indication
17 of what the ongoing objections are.

18 JUDGE ALBERS: Okay. Well, if anybody else
19 does want to say anything further, go ahead now or
20 else let us know if you intend to file something on
21 the originally scheduled date of April 8th.
22 Otherwise, Judge Von Qualen and I can discuss it

1 between ourselves and issue a ruling.

2 MR. KELLY: Judge, John Kelly on behalf of CSI.

3 We did file a response indicating we
4 would agree with the position taken by NG-911, so to
5 the extent that Mr. Hird has expressed NG-911's
6 position, CSI would support that same qualification.

7 JUDGE ALBERS: Okay. We got your filing as
8 well. Thank you.

9 All right. Unless there's anything
10 else on this issue then, we will move along although
11 just so we know, should we expect anything on the 8th
12 from anybody?

13 MS. HERTEL: This is Nancy Hertel.

14 Your Honor, if it was sufficient what
15 I stated, no, I would not file something on the 8th.

16 JUDGE ALBERS: That's fine. We'll take your
17 comments that you made today her into consideration.

18 MR. HARVEY: Staff, Your Honor, is unlikely to
19 file anything on the 8th with the understanding that
20 staff is not subject to a protective order in the
21 first place, so that would be our only caveat.

22 JUDGE ALBERS: Okay. Mr. Johnson?

1 MR. JOHNSON: No, we don't expect any filings
2 on the 8th.

3 JUDGE ALBERS: All right. We'll take all the
4 this into consideration and issue a ruling.

5 Moving on then now that we don't have
6 any other preliminary matters, when we last met in
7 March, Mr. Kelly mentioned that he anticipated that
8 all CSI members would have signed the contract with
9 NG-911 by the end of March and that they would
10 hopefully by now have a better idea of how the
11 parties would anticipate proceeding.

12 So if anyone would like to update us
13 on those efforts, please go ahead.

14 MR. KELLY: Yes, Your Honor. John Kelly on
15 behalf of Counties of Southern Illinois.

16 The contract with NG-911 and the
17 service provider has been tendered both in redacted
18 form and complete form to the various parties as part
19 of the response to a data request that has not been
20 filed with the Commission.

21 Additionally, as of yesterday or the
22 day before yesterday, we have now filed again as a

1 supplement to those data requests the signature pages
2 for all 16 CSI members, CSI itself, and NG-911, Inc.
3 on that contract, so I think that the issue of the
4 contract, its signature and its being made available
5 to the other parties has now resolved. I'm not sure
6 where either intervenors or staff want to go from
7 there but at least from our perspective we do believe
8 that has been resolved.

9 MR. HIRD: Your Honor, if I might, this is Rick
10 Hird.

11 I do have a motion for protective
12 order pending with respect to providing the contract
13 between NG-911, Inc. and CSI.

14 JUDGE ALBERS: Right, and it was our thoughts,
15 Judge Von Qualen and I's thoughts that the document
16 we sent out with that ruling would address any
17 confidential treatment in the case.

18 MR. HIRD: Okay.

19 JUDGE ALBERS: And as far as where we go from
20 here, is there any plan amongst the parties?

21 MR. KELLY: Well, Your Honor, if I could update
22 you and Judge Von Qualen, we also talked the last

1 time about trying to informally look at perhaps other
2 ways of proceeding, and in that vein, we have sent to
3 staff a proposed petition to modify an existing grant
4 of 911 authority.

5 Staff has reviewed that and sent it
6 back to us with some thoughts and concerns, and we
7 are in the process, that is, CSI and the specific
8 county involved, Jackson County, are in the process
9 of reviewing staff's suggestions in terms of where we
10 go from here on that which, again, is not technically
11 part of this proceeding but I think as we discussed
12 on the last status call, it was a way we were looking
13 at to try to perhaps move this thing along without
14 quite as much involvement.

15 (Whereupon an off-the-record
16 discussion transpired between
17 the judges.)

18 MR. HARVEY: This is Matt Harvey, Your Honor.

19 I think what Mr. Kelly is suggesting,
20 and he'll undoubtedly jump in if I'm not representing
21 this to the court correctly, is that each of the
22 affected counties will file a revision to an existing

1 911 plan as contemplated by 83 Administrative Code,
2 Part, and I identify it with trepidation, 725 which
3 would substantially incorporate the I guess change in
4 providers and would thereafter I guess incorporate
5 into those filings the other aspects of the 911 plan,
6 you know, the CSI proposal.

7 I believe that staff is reviewing the
8 Jackson County plan as something of a template for
9 the remaining counties. Obviously, this is something
10 that we don't view as necessarily creating an end run
11 around this proceeding. I'm not certain that CSI
12 concurs in that assessment, but the fact is that I
13 think that CSI plans to I guess do in a supplement, a
14 series of what would be somewhat supplementary
15 proceedings what it would otherwise do here, and
16 forgive me for not waxing terribly eloquent about
17 that.

18 JUDGE ALBERS: All right. I'm going to confer
19 with Judge Von Qualen for a moment.

20 (Whereupon an off-the-record
21 discussion transpired between
22 the judges).

1 JUDGE ALBERS: Back or not record.

2 It would seem to us that you folks
3 might just be wanting some more time if we read
4 between the lines correctly to at least further
5 consider or pursue this plan B option.

6 Is that an accurate assessment of what
7 we've been hearing?

8 MS. ARMSTRONG: Your Honor, this is Kelly
9 Armstrong for staff.

10 I was just going to say we can't speak
11 for what CSI wants as far as more time.

12 Staff has reviewed their alternate and
13 given them feedback on it, and I think from this
14 point whether or not CSI wants more time or whatever
15 they need to go forward, we're open to hearing what
16 they would like to do at this point.

17 JUDGE ALBERS: Okay.

18 MR. KELLY: John Kelly on behalf of CSI.

19 While I would agree with most of what
20 Matt Harvey said characterizing where we are, I'm not
21 sure that I would characterizes it as an end run.

22 Certainly when CSI filed its petition

1 about a year ago now or a little over a year ago now,
2 there was not a thought of having a third party SSP.

3 Since then NG-911 has been certified.
4 CSI has now contracted with them, and through that
5 process, we believe that both the statute and the
6 rules, Part 725, anticipate the ability of 911
7 providers or 911 systems to change their service
8 provider through the modification of their existing
9 plan. That's what we're exploring.

10 I'm not -- I think I characterized it
11 in the last status hearing as working on parallel
12 tracks to accomplish the purpose.

13 The purpose here is to get a Next
14 Generation 911 system pilot program approved for
15 operation in the 15 counties and the City of Marion
16 that CSI represents. That's where we're going.

17 How we get there I would hope would be
18 a process that is agreeable to everybody and with the
19 least amount of effort and work for all to provide
20 this service, and so we're looking at is there a
21 better way to do this, and that might be the plan
22 modification.

1 Now, as I said, it's been like a week
2 or so that we've had staff's comments back on the
3 plan, and I would agree with Matt that it is probably
4 more of a template, but if it's going to be a
5 template, we want to get it right.

6 So I guess from the standpoint of
7 where we go next, on the Docket 12-0094, I don't know
8 whether there are additional data requests that staff
9 and/or intervenors are going to have based on the
10 response on the contract.

11 If they do, then my sense is let's go
12 ahead and get them. Let's keep this going, albeit
13 maybe it's moving slowly, and in the meantime, we're
14 looking at this planning modification avenue also.

15 JUDGE ALBERS: All right. Well, here's my
16 underlying thoughts.

17 When this all started, there seemed to
18 be some, for lack of a better word, urgency on the
19 part of CSI just to get this approved and done, and
20 for various reasons, it was delayed here and there
21 over the last year or so, and now it seems there's
22 been a little bit of progress in terms of getting a

1 contract with NG-911 finalized, getting the counties
2 and the cities signed off on that contract, and I'm
3 just wondering, given the last year that's passed,
4 you know, what do you folks want to do now.

5 I mean, Judge Von Qualen and I can
6 delay this again or we can set more of a schedule for
7 testimony and whatnot. So the ball is in your court,
8 folks, and I'm not just not sure where all of you are
9 in terms of how ready you are to proceed and whatever
10 steps you think are next.

11 MR. KELLY: Your Honor, again John Kelly
12 speaking on behalf of CSI, and I'm only talking on
13 behalf of CSI.

14 The urgency is driven by two things.
15 Number one is, again, we believe this is the best 911
16 system for the residents of the Counties of Southern
17 Illinois that there is, and we would like to get it
18 implemented for that reason, but the statute which
19 authorized the pilot plan has an outside date of
20 July 1 of 2013.

21 Now, whether or not that's extended or
22 not I don't know, but that's what initially caused

1 the urgency, and I would agree with Your Honor's
2 characterization that for a whole bunch of reasons,
3 it's taken us awhile to get to this point.

4 My sense is if staff or intervenors
5 have additional data requests to file, I think go
6 ahead and file them. And I'm not trying to speak for
7 them. I don't know.

8 But in the meantime, let's set another
9 status date for early May, and we'll see where we are
10 with this plan modification issue, and if that seems
11 to be a more economical and faster and more
12 resourceful use of everybody's time and resources,
13 then we may just say at that point, you know, let's
14 slow down on the 12-0094 and we'll go this other way.

15 Or maybe we'll say, you know what,
16 this isn't working either. Let's get a schedule, and
17 let's get testimony and all of the other things
18 necessary to bring this matter to a conclusion before
19 Your Honors and ultimately the Commission if
20 necessary.

21 JUDGE ALBERS: Well, does anybody have any
22 further DRs they want issued to CSI or anyone else

1 for that matter?

2 MS. ARMSTRONG: Judge, unfortunately, staff
3 counsel is in Chicago and staff is in Springfield so
4 it's difficult for us to say at this point whether or
5 not we will have more DRs based upon the contract.

6 I would like to note that several
7 months ago, CSI filed a motion to amend their plan,
8 and at that point, it was staff's position that we
9 needed an update to the plan in order to move forward
10 and be in a position where we can provide testimony
11 because there was information lacking in the plan.

12 Some of that information included the
13 contract. Some of that information was more than
14 just the contract. CSI's motion was denied in part
15 because the contract was not a portion of that
16 filing.

17 We do now have the contract, but there
18 are, staff still believes, updates that are necessary
19 in order for us to be able to provide a meaningful
20 recommendation on the plan.

21 So to the extent that we still don't
22 have that, we don't have any objection in holding

1 this over until May again if that's what CSI wants to
2 do, but we would like to make sure that everyone is
3 aware that that still remains staff's position that
4 we're still looking for some sort of update as to the
5 plan specifics as they relate to having an SSP that
6 is NG-911.

7 JUDGE VON QUALEN: This is Judge Von Qualen.

8 Ms. Armstrong, are you saying you
9 expect another filing from CSI?

10 MS. ARMSTRONG: Yes, Your Honor.

11 JUDGE VON QUALEN: And, Mr. Kelly, you
12 referenced a July 2013 date. Could you give us a
13 citation for that date? We're looking at the act and
14 I haven't identified the date yet, so if you could
15 tell me where it is in there.

16 MR. KELLY: I'm not sure I have that readily
17 available.

18 MS. HERTEL: I believe they're talking about
19 the section at the very end of Article 13 pursuant to
20 which the entire article would sunset on July 1, 2013
21 if the legislature doesn't take action to either
22 extend it or revise it.

1 MR. HARVEY: And at the risk of being wrong,
2 Your Honor, this is Matt Harvey, I will state that it
3 is codified at 220 Compiled Statutes 5/13-1200.

4 JUDGE VON QUALEN: All right. Thank you.

5 MR. KELLY: Judge, were you finished with your
6 questions?

7 JUDGE VON QUALEN: Yes.

8 MR. KELLY: John Kelly on behalf of CSI.

9 I understand that some of the
10 information that staff believes they lack is
11 contingent upon the contract with the SSP and some
12 additional negotiation between the SSP and the LECS
13 relative to trunking arrangements and those kinds of
14 things, and all of that is in progress.

15 But I also have to say that in our
16 amended plan and in filings we made after the amended
17 plan, I thought we answered staff's questions on some
18 of that stuff, and I don't want to get into a big
19 shouting match here over that, but, you know, I
20 thought we had addressed some of that stuff.

21 I understand there are some things
22 that are not addressed simply because of the facts of

1 life of negotiating the trunking arrangements and all
2 of the other things that became the obligation of
3 Next Generation 911 after the signing of the
4 contract.

5 If there are still questions that are
6 not answered, we're happy to answer them, but we
7 believe that the amended filing, additionally, the
8 information filed by us in response to staff's
9 concerns addresses those or some of those concerns.

10 MS. ARMSTRONG: Again, I just would like to
11 remind Mr. Kelly that a motion for that amendment was
12 denied, so my understanding is then that that filing
13 was not actually filed of record.

14 MR. KELLY: I would agree with that.

15 MS. ARMSTRONG: And we would agree with you
16 that, yes, some of staff's concerns were addressed in
17 that filing, but again, it wasn't filed.

18 MR. HARVEY: One thing. This is Matt Harvey
19 again.

20 If the Administrative Law Judges
21 would, in light of the filing of the contract and
22 such other, I mean, insofar as the contract correctly

1 integrates with the supplemental filing that CSI
2 sought to make but which the judges denied leave, you
3 know, if CSI is prepared to stand on that and if the
4 existing agreement integrates with that filing, you
5 know, CSI might at this point wish to ask leave to
6 have that reconsidered.

7 MR. KELLY: And CSI will consider that, and if
8 that's appropriate, we may make that request, but I
9 think we need to internally talk about that.

10 MS. HERTEL: Your Honor, at some point may
11 intervenors make some comments?

12 JUDGE ALBERS: Go ahead.

13 MS. HERTEL: I guess just three comments.

14 One is I think the question was posed
15 whether there would be additional discovery, and
16 until the judges enter the protective order, I do not
17 have access to the complete contract to provide
18 clients, you know, internal clients, to determine
19 whether we would want to do some discovery.

20 And then second, in terms of the
21 amended plan that was filed and then subsequently the
22 modifications when the judges denied that motion, I

1 think the way the record stands now, it would be very
2 difficult to create a clear record if CSI is going to
3 pursue this proceeding because of the fact that so
4 much of the testimony needs to be updated in light of
5 having chosen an SSP.

6 So my concern is that if we are going
7 forward, we would need to do something to make it
8 clear so people who would file responsive testimony
9 would know what they're responding to.

10 And then third, just for the record,
11 if CSI does determine that they want to go the route
12 of modifications of individual plans, I am not taking
13 a position one way or another, but it raises concerns
14 about whether that would conform to the statutory
15 requirements in terms of what a pilot project looks
16 like whether you can do it on an individual case
17 basis like that, and I'm not taking a position on it
18 today until we see, but we would want the opportunity
19 as appropriate to participate if they decide to go
20 the route of individual plan modifications.

21 JUDGE ALBERS: Understood.

22 Unless somebody else wants to add

1 something real quick, I'm going to confer with Judge
2 Von Qualen for a moment.

3 MR. HIRD: Your Honor, this is Rick Hird on
4 behalf of NG-911, Inc.

5 I think I would concur with a lot of
6 what Mr. Kelly indicated. I guess this isn't the
7 time to address the legal arguments raised by AT&T
8 with regard to the continued statutory viability of
9 the CSI project, but I don't have the same concerns
10 obviously.

11 I think a little extra time would be
12 helpful in this case. We are making progress, and
13 NG-911, Inc.'s project manager, Mr. Lovett, has been
14 working diligently trying to obtain pricing and
15 trunking information from the carriers, and we would
16 certainly join in the request that this be continued.

17 With respect to what's on file in
18 terms of a plan and the testimony and that sort of
19 thing, I think CSI is going to be faced with kind of
20 cleaning up the record perhaps with some sort of a
21 motion to reconsider. We're going to have to cross
22 that bridge, but right now, I think, you know, things

1 are progressing.

2 I do have at the conclusion of your
3 status this afternoon some additional comments on the
4 motion for protective order that I filed that I think
5 might be very important to the Commission in its
6 consideration of the order, the draft order that was
7 circulated, so at the appropriate time, I would like
8 to address that.

9 JUDGE ALBERS: All right. We're going to mute
10 the phone here for a moment.

11 (Whereupon an off-the-record
12 discussion transpired between
13 the judges.)

14 JUDGE ALBERS: Having conferred with Judge Von
15 Qualen, I think we have a way to move forward here,
16 and I encourage her to jump in if I neglect to
17 mention something that we discussed, but first, if
18 anybody has any discovery they think they can do now,
19 go ahead and do it as soon as possible.

20 If you think you need to get the
21 proprietary, I'm sorry, the confidential order or
22 ruling in place before you can get documents and

1 issue more discovery, we're going to try to get that
2 ruling out as soon as we can to facilitate that
3 further discovery.

4 If CSI believes that it is the
5 appropriate time to amend its petition again, that's
6 fine, but please, well, you must provide legislative
7 versions of any documents you're changing from the
8 original petition so we can see what's changed.

9 And then, Mr. Hird, you had some other
10 comments you wanted to offer?

11 MR. HIRD: Yes, Your Honor. I wanted to make
12 sure that I made a record on what has happened with
13 the confidential treatment of the service provider
14 agreement entered in between my client NG-911, Inc.
15 and CSI.

16 As you know from my motion for
17 protective order, there was a redacted public version
18 and an unredacted confidential version, and
19 initially, in response to the data request, the staff
20 was the only party to receive the unredacted
21 confidential version.

22 Now, on March 21st, I think the

1 following day, staff sent an e-mail to CSI requesting
2 CSI to provide a copy of the agreement identifying
3 those portions of the agreement claimed to be
4 confidential or proprietary. I prepared that on
5 behalf of NG-911, Inc. and sent it to Mr. Kelly's
6 office for delivery to staff, and it is a full
7 version of the agreement with the confidential
8 portions bracketed or noted somehow so that staff
9 could look at it and see instantly, without comparing
10 the redacted and unredacted versions, they could see
11 instantly what was claimed to be confidential.

12 Unfortunately, when CSI sent that out
13 in response to the staff e-mail, the full
14 confidential version was sent to all parties except
15 staff, and so it was disclosed.

16 On discovery of that mistake, counsel
17 for CSI sent an e-mail to the intervenors requesting
18 that they delete the e-mail that had transmitted the
19 document.

20 I want to specifically thank
21 Ms. Hertel who responded very promptly and advised
22 that she had deleted the e-mail without forwarding it

1 internally, and we appreciate that very much.

2 We did not receive, at least I'm
3 unaware of any responses from any other party.

4 I want to make sure that if the judges
5 grant the request for confidential treatment that it
6 would certainly extend to this document that was
7 inadvertently sent to all parties instead of just
8 staff, and that's the extent of my additional
9 comments.

10 Thank you.

11 MR. HARVEY: Staff has no objection to
12 Mr. Hird's request, Your Honor.

13 MS. HERTEL: Nor does AT&T Illinois, Your
14 Honor.

15 MR. JOHNSON: ITA, the Illinois
16 Telecommunications Association, has no objection.

17 JUDGE ALBERS: I think what you're asking for,
18 Mr. Hird, is consistent with what happens when there
19 are such mistakes made.

20 MR. HIRD: Yes, Your Honor, and I think that
21 what I'd like to also just as a matter of judicial
22 economy here, as long as all parties are here on the

1 phone, it would be helpful if we had some response
2 from them as to whether they did delete it or whether
3 they forwarded it so we would at least know that.

4 MR. JOHNSON: This is Matt Johnson with the
5 ITA.

6 We have not forwarded the document on.

7 MS. HERTEL: This is Nancy Hertel from AT&T
8 Illinois. I think as Mr. Hird indicated, I deleted
9 it, and I did not forward it on electronically to
10 anyone before I deleted it.

11 JUDGE ALBERS: Did ITA delete it?

12 MR. JOHNSON: It will be. I haven't forwarded
13 it. I will delete it. I haven't looked at it since.

14 JUDGE ALBERS: Did you hear that?

15 MR. HIRD: Yes. Thank you, Your Honor.

16 MR. JOHNSON: I'd be happy to respond by
17 e-mail.

18 JUDGE ALBERS: Would you like e-mail
19 confirmation?

20 MR. HIRD: I would appreciate it. That would
21 give us much peace of mind, and I would appreciate
22 that.

1 JUDGE ALBERS: All right. I don't think
2 there's anyone else on line, any other intervenors on
3 the line.

4 All right. Looking ahead then, how
5 far out -- I anticipate Judge Von Qualen and I can
6 get a ruling out on the terms governing the,
7 confidential materials pretty soon. How far out
8 would you folks like to continue this?

9 We can go off the record to discuss
10 this.

11 (Whereupon an off-the-record
12 discussion transpired at this
13 time.)

14 JUDGE ALBERS: Back on the record.

15 It appears everybody can make a status
16 hearing on April 30th at 9 a.m.

17 MS. HERTEL: Your Honor, this is Nancy Hertel.

18 Would you like AT&T Illinois to supply
19 the same bridge that day?

20 JUDGE ALBERS: If you'd like, that would be
21 great.

22 MS. HERTEL: I will.

1 JUDGE ALBERS: Thank you.

2 MR. JOHNSON: Your Honor, this is Matt Johnson
3 with the Illinois Telecommunications Association. I
4 just had one question relative to the next status
5 hearing and anything that might be discussed or
6 brought up on the record that has only been seen
7 previously by staff or CSI, not by the other
8 intervenors, that's relative to the case but
9 obviously is affecting the things previously
10 discussed that would affect the outcome, are those
11 things that the parties would be sharing with the
12 other intervenors at some point?

13 JUDGE ALBERS: Well, I'm hoping that when this
14 document, the terms governing confidential treatment
15 is ruled upon, that that could be used for sharing
16 information that is deemed confidential, and I think
17 you're also possibly referring to the ETSB template?

18 MR. JOHNSON: Yes.

19 JUDGE ALBERS: I think that would be useful,
20 but I don't know, I can't speak to whether or not
21 staff and CSI are comfortable with the state of that
22 document, whether it's --

1 MR. KELLY: John Kelly on behalf of CSI.

2 Well, I think certainly when the
3 counties file their modified plans, obviously they
4 then become public record.

5 So until such time as either, one, CSI
6 decides that's what they're going to do, and two, the
7 template is fully developed, I'm a little reluctant
8 to say we're going to share it in the process.

9 And an additional comment is,
10 actually, what staff has suggested is part of the
11 typical template that the ICC has in place for filing
12 911 plans in the first place, and that's the form
13 that we're working off of.

14 (Whereupon an off-the-record
15 discussion transpired between
16 the judges.)

17 MR. JOHNSON: So that communication with staff
18 would not be considered an ex parte as part of this
19 docket?

20 MS. ARMSTRONG: Sorry. Can you say that again?
21 We couldn't hear you in Chicago.

22 MR. JOHNSON: My question was whether that

1 communication between staff and CSI was not
2 considered ex parte as part of this docket?

3 MS. ARMSTRONG: Staff has not had any
4 communications with CSI that were are ex parte
5 communications that we haven't already filed a report
6 for.

7 Staff did communicate with Jackson
8 County's counsel regarding a modification to the
9 Jackson County plan that my understanding is did not
10 involve this docket. I understand that CSI is aware
11 that the individual ETSBs are considering individual
12 modification.

13 But to the extent that anything is
14 shared with staff by CSI relating to individual
15 modifications that relates to this docket, staff will
16 be filing an ex parte report.

17 JUDGE ALBERS: I'm still a bit -- Jan, go
18 ahead.

19 JUDGE VON QUALEN: We're a little bit
20 confounded here how we were discussing these changes
21 to this agreement throughout the status hearing and
22 then to be told that it has nothing to do with this

1 docket. We're puzzled and I will say a little
2 dismayed because we spent a half hour on the subject,
3 so I think staff and CSI need to think about what it
4 is they're doing and what docket they're doing it in,
5 and to the extent you're doing things in this docket,
6 it would be subject to discovery or it would be
7 subject to an ex parte report.

8 MR. KELLY: This is John Kelly on behalf of
9 CSI.

10 I would agree with I believe it was
11 Kelly's statement that the intended plan
12 modifications by individual counties are not part of
13 this docket and do not invoke any kind of ex parte
14 communication.

15 MS. ARMSTRONG: I just wanted to clarify that
16 staff was contacted by counsel, not Mr. Kelly, for
17 Jackson County regarding a modification to Jackson
18 County's ETSB that we understand may or may not
19 interplay with CSI's pilot program in this docket.
20 However, that ETSB did not specifically address
21 matters relating to the Next Generation pilot.

22 And to the extent that in the future

1 staff has ex parte communications with CSI that do
2 involve modifications to individual ETSBs, of course,
3 staff will file ex parte reports.

4 JUDGE ALBERS: Well, a couple of thoughts. I'm
5 not sure how we can distinguish between the two,
6 what's being discussed in this docket and what the
7 individual ETSBs may or may not be considering. I'm
8 not sure how we can separate that from the
9 discussions we've already had in this case, and as I
10 understand the ex parte legislation, it's not about
11 recording it. It's more or less about preventing it.
12 That's the primary concern. If it does happen, it's
13 to be recorded.

14 You know, not knowing more, at a
15 minimum here, I'm troubled. I'm not sure what else
16 to say about it.

17 MR. HARVEY: Well, Your Honor, this is Matt
18 Harvey. In the future, we will I guess, if that's
19 the law of the case, then we'll follow it, and we'll
20 I guess file ex parte reports in this docket in all
21 cases where there's the remotest chance that they
22 should be.

1 JUDGE ALBERS: Well, earlier I had just assumed
2 that if CSI, and I don't mean to -- I'll just speak
3 for myself here. I just assumed if CSI and staff are
4 discussing modifications to an ETSB plan that the
5 idea was that eventually it would be shared with all
6 so that we could see how it impacts what we're doing
7 here in 12-0094.

8 Now it sounds like that might not have
9 been contemplated, so I'm just not sure what to think
10 now.

11 MR. HARVEY: Well, Your Honor, my understanding
12 was that what we discussed was the Jackson County
13 ETSB alone filing a modification to its plan that
14 didn't necessarily, at least at this stage of the
15 proceedings, include reference to the pilot program.

16 Now, if it's the wish of the court
17 that we incorporate these matters into this
18 proceeding, then, you know, obviously, that's a
19 reasonable expectation, and we'll follow that.

20 MR. KELLY: Your Honor, John Kelly on behalf of
21 CSI.

22 I think it's absolutely critical to

1 understand that the plan modification discussion was
2 Jackson County and Jackson County alone. It was not
3 CSI. CSI is the petitioner in this proceeding.

4 At some point in the future, and as we
5 discussed even last month, on last month's status
6 call, at some point in the future, the filing of
7 these individual plan modifications, if that's what
8 happens, may have an impact on this docket, and
9 certainly at that time we're all going to be dealing
10 with the impact of the plan modification.

11 But right now...first of all, nothing
12 has been filed. It's in the discussion stage only,
13 and again, in the vein of trying to involve everybody
14 and move this thing along cooperatively as much as
15 possible, that's why we even talked about it.

16 I suppose we could have just gone
17 ahead, or not we, Jackson County could have gone
18 ahead and filed it, and then, you know, that's
19 between Jackson County and the ICC.

20 I really think we have to distinguish
21 between CSI who is the petitioner in this case and
22 the Jackson County ETSB or any other individual ETSB.

1 Plan modifications are filed all the
2 time.

3 JUDGE ALBERS: Well, if Jackson County is the
4 party at issue, then why are we hearing about it in
5 this case?

6 MR. KELLY: I guess that's my question.

7 JUDGE ALBERS: You're the ones that brought it
8 up, not Judge Von Qualen and I.

9 MR. KELLY: I understand that, but it was in
10 the vein of letting everybody know what we're doing
11 to try to get this Next Generation 911 system
12 approved.

13 JUDGE ALBERS: We appreciate being advised of
14 what the plan is here. We just thought it was an all
15 encompassing plan.

16 At this point, we would strongly
17 caution all the parties to be very mindful of what
18 communications you're having with each other and not
19 simply believe they can make a note about it on an
20 ex parte report to make any misperceptions or bad
21 appearances go away.

22 MR. HARVEY: Well, Your Honor, this is Matt

1 Harvey. In the interest of I guess making certain
2 that there is no, that nothing whatsoever is -- well,
3 I'll take that back.

4 In the interest of complete
5 transparency, we will submit a filing that
6 incorporates everything that we have discussed with
7 Jackson County if that will resolve the court's
8 concern in that regard, at least partially.

9 JUDGE ALBERS: Well, that may help, and at the
10 same time, we understand that staff is under
11 different legislative obligations, statutory
12 obligations than other parties, but nonetheless, I'm
13 concerned with the direction this conversation has
14 taken.

15 You want to add anything?

16 JUDGE VON QUALEN: I think we've discussed this
17 enough. If there's any discovery and if there are
18 any discovery disputes about it, it will come before
19 us, and we'll make rulings on it.

20 In the meantime, I think we've given
21 our cautionary statement.

22 Is there anything else we need to

1 discuss this afternoon?

2 JUDGE ALBERS: I don't think so.

3 All right. If nothing further, thank
4 you all, and we'll continue this to 9 a.m. on
5 April 30th.

6 (Whereupon the hearing was
7 continued to April 30, 2013 at
8 9:00 a.m.)

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